

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----X
 THE NEW AMERICAN CINEMA GROUP, INC., :

Plaintiff, :

-against- :

P8H, INC. d/b/a PADDLE8, VALENTINE :

UHOVSKI, RAMESHKUMAR GANESHAN, :

and MICHAEL MCCLELLAN, :

Defendants. :

-----X

Civil Action No. _____

Removed from:
 Supreme Court of the State of
 New York, County of New York

**NOTICE OF REMOVAL UNDER RULE 9027 OF THE
 FEDERAL RULES OF BANKRUPTCY PROCEDURE**

TO: THE JUDGES OF THIS UNITES STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

Megan E. Noh, as Chapter 11 Trustee (the “Trustee”) of debtor P8H, Inc., d/b/a Paddle 8, a defendant in the above-captioned action (the “Removing Defendant”), gives notice of removal of the entirety of the above-captioned pending civil action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§ 1334(b) and 1452, and Rule 9027 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”).

As grounds for removal, Removing Defendant states as follows:

Preliminary Statement

1. On March 10, 2020, The New American Cinema Group, Inc. (the “Plaintiff”) commenced a civil in the Supreme Court for the State of York, County of New York, entitled *The New American Cinema Group, Inc. v. P8H, Inc. d/b/a Paddle8, et al.*, Index No. 651594/2020

(“NACG Action”) The Removing Defendant has not filed an answer in the NACG Action by reason of the automatic bankruptcy stay applicable to the NACG Action, as described below.

2. In the Complaint, the Plaintiff asserts causes of action for monetary damages in connection with the Removing Defendant’s alleged default in paying obligations to the Plaintiff stemming from a charity art auction. The Plaintiff filed a proof of claim in the Removing Defendant’s currently pending bankruptcy case in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). Plaintiff’s proof of claim is predicated on the same facts underlying the NACG Action.

3. The Complaint also names as defendants Valentine Uhovski, the Removing Defendant’s former Chief Executive Officer (“Uhovski”), and two other officers and directors of the Removing Defendant, against which Plaintiff also asserts causes of action for breach of duties and related conduct. The co-defendants’ potential liability may be covered by the Removing Defendant’s directors’ and officers’ insurance policy (“D&O Coverage”).

4. In the Removing Defendant’s bankruptcy case, the Official Committee of Unsecured Creditors commenced an adversary proceeding against defendant Uhovski in early May 2020 which asserts similar claims against Uhovski as Plaintiff asserted in the NACG Action (the “Committee Action”). The Committee Action implicates the same D&O Coverage, which has a finite limit. The Trustee believes that removal of the NACG Action is advisable in order to preserve the rights of the Removing Defendant’s bankruptcy estate in the D&O Coverage, and to administer the duplicative claims of the Complaint and the Proof of Claim in a single forum.

5. Finally, defendant Rameshkumar Ganeshan is the Removing Defendant’s controller and last remaining employee. His employment has been continued by the Trustee because his services have been essential to the Trustee in administering the bankruptcy estate. Mr.

Ganeshan is familiar with the Removing Defendant's business and financial records, and has been performing a variety of necessary financial and business functions requested of him by the Trustee.

6. Removal of the NACG Action is appropriate because this Court maintains "arising under" and "related to" bankruptcy jurisdiction pursuant to 28 U.S.C. §§ 1334(b) and 1452(a).

Bankruptcy Jurisdiction

7. On March 16, 2020, Removing Defendant filed a voluntary petition for relief under Chapter 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtor's case is pending in the Bankruptcy Court as *In re P8H, Inc., d/b/a Paddle 8*, Case Number 20-10809 (the "Bankruptcy Case") before Honorable Stuart M. Bernstein, United States Bankruptcy Judge.

8. The Trustee was appointed by order of the Bankruptcy Court entered on May 8, 2020 [Bankr. ECF No. 43]. The Trustee is a statutory fiduciary holding, in that capacity, the Removing Defendant and the property of its bankruptcy estate.

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1334(b), which provides that United States District Courts shall have jurisdiction over all civil proceedings, "arising under" or "related to" cases under title 11 of the Bankruptcy Code.

10. The causes of actions asserted by Plaintiff in the NACG Action are "core proceedings" within the meaning of, *inter alia*, 28 U.S.C. § 157(b)(2)(B), (C), (E), and (O) in that they involve, *inter alia*, (i) allowance or disallowance of claims against the Removing Defendant's bankruptcy estate, (ii) counterclaims by the Removing Defendant for the benefit of the Removing Defendant's bankruptcy estate; and (iii) other matters pertaining to the liquidation of the assets of the estate and the adjustment of the debtor-creditor relationship.

11. Alternatively, the causes of action in the NACG Action are “related to” to the Bankruptcy Case because:

- a. Plaintiff is seeking a judgment against the Removing Defendant, which “could conceivably have” an effect on the Removing Defendant’s bankruptcy estate;
- b. An award of judgment in favor of the Plaintiff, which “could conceivably have” an effect on the Removing Defendant’s bankruptcy estate.

See In re Cuyahoga Equip. Corp., 980 F.2d 110, 114 (2d Cir. 1992) (“The test . . . is whether [the litigation’s] outcome might have any conceivable effect on the bankrupt estate.”). An action is “related to” a bankruptcy proceeding even when the claims are between third parties. Celotex Corp. v. Edwards, 514 U.S. 300 (1995) (resolving a circuit split by holding that a dispute between parties other than the debtor may be “related to” a bankruptcy proceeding although the debtor has no interest in the property over which the parties are in dispute).

12. For any claims or parties not subject to jurisdiction under 28 U.S.C. § 1334, supplemental jurisdiction lies under 28 U.S.C. § 1367 because all claims against all parties in the NACG Action form part of the same case or controversy.

Compliance with Procedural Requirements for Removal

13. Under Bankruptcy Rule 9027(a)(2), an action pending at the time a bankruptcy case is commenced – such as the NACG Action – may be removed “within the *longest of*; (A) 90 days after the order for relief in the case under the Code; (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under §362 of the Code; or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief. Fed. R. Bank. P. 9027(a)(2) (*italics added*). The NACG Action was already pending when the Bankruptcy Case commenced, and is subject to the automatic stay under

Section 362. Accordingly, this notice of removal is timely to effectuate removal of the NACG Action.

14. Pursuant to Bankruptcy Rule 9027: (a) this Notice of Removal is being filed with the clerk for the district and division within which the NACG Action is pending; (b) this Notice of Removal is signed pursuant to Fed. R. Bankr. P. Rule 9011; (c) the Trustee, on behalf of the Removing Defendant, states that the NACG Action is a core proceeding, but if it is determined to be non-core Removing Defendant nevertheless consents to entry of final orders or judgment by the Bankruptcy Court; (d) this Notice of Removal is timely filed; (e) this Notice of Removal is accompanied by a copy of all process and pleadings filed to date in the NACG Action, (f) Removing Defendant has contemporaneously filed a copy of this notice with the Clerk of the Supreme Court of the State of New York, County of New York and shall promptly serve a copy of this Notice of Removal upon Plaintiff's counsel.

15. Subsequent to removal, the NACG Action should be referred to the United States Bankruptcy Court for the Southern District of New York in accordance with the District Court's Amended Standing Order of Reference, General Order No. M-10-468 (S.D.N.Y. entered Feb. 1, 2012) (Preska, C.J.).

16. The Trustee, on behalf of the Removing Defendant, expressly reserves the right to raise all claims, defenses and counterclaims that may be available in the NACG Action after removal.

WHEREFORE, the Removing Defendant removes the NACG Action from the Supreme Court of the State of New York, New York County to the United States District Court for the Southern District of New York, and requests that the matter be referred to the Bankruptcy Court in connection with the Bankruptcy Case pending for the Removing Defendant.

Dated: October 1, 2020
New York, New York

PRYOR CASHMAN LLP

By: /s/ Richard Levy, Jr.
Richard Levy, Jr.
Conrad K. Chiu
Andrew S. Richmond
7 Times Square
New York, NY 10036-6569
Tel. (212) 421-4100
Fax. (212) 326-0806
Email: rlevy@pryorchashman.com
cchiu@pryorchashman.com
arichmond@pryorchashman.com

*Attorneys for Megan E. Noh,
Chapter 11 Trustee of Removing Defendant P8H,
Inc. d/b/a Paddle 8*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE NEW AMERICAN CINEMA GROUP, INC,

Plaintiff,

- against -

P8H, INC. d/b/a PADDLE8, VALENTINE
UHOVSKI, RAMESHKUMAR GANESHAN,
and MICHAEL MCCLELLAN,

Defendants.

Index No. _____

SUMMONS

To: P8H, Inc. d/b/a Paddle8
107 Norfolk Street
New York, New York 10002

Mr. Rameshkumar Ganeshan
107 Norfolk Street
New York, New York 10002

Mr. Valentine Uhovski
107 Norfolk Street
New York, New York 10002

Mr. Michael McClellan
107 Norfolk Street
New York, New York 10002

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon Plaintiff's attorney an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pursuant to CPLR 503(a), Plaintiff designates New York County as the place of trial.

Dated: New York, New York
2020-March-10

OLSOFF CAHILL COSSU LLP

By: s/ Paul Cossu
Paul Cossu
John R. Cahill
Jonathan A. Olsoff
1285 Avenue of the Americas
New York, New York 10019
212-719-4400

Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE NEW AMERICAN CINEMA GROUP, INC,

Plaintiff,

- against -

P8H, INC. d/b/a PADDLE8, VALENTINE
UHOVSKI, RAMESHKUMAR GANESHAN,
and MICHAEL MCCLELLAN,

Defendants.

Index No. _____

COMPLAINT

Plaintiff, The New American Cinema Group, Inc. (“NACG”), a not-for-profit New York corporation, by its attorneys, Olsoff | Cahill | Cossu LLP, as and for its Complaint against Defendants P8H, Inc., d/b/a Paddle8 (“Paddle8”), Valentine Uhovski (“Uhovski”), Rameshkumar Ganeshan (“Ganeshan”), and Michael McClellan (“McClellan”) (collectively, “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. This action seeks (a) money damages, including payment of all sums due and owing to NACG, and (b) appointment of a receiver, in connection with Paddle8’s willful default of its payment obligations to NACG stemming from a charity art auction (the “Charity Auction”) that Paddle8 hosted months ago. Paddle8, however, has withheld—and appears to have spent—the sale proceeds from NACG, despite Defendants acknowledging that Paddle8 has received payment from the buyers of the art, and promising to make payment on multiple occasions. On information and belief, Defendants have misappropriated the funds Paddle8 received from the Charity Auction, which they were obligated to hold in trust for the NACG, and used those funds to perpetuate a Ponzi scheme designed to defraud the NACG and keep Paddle8 operating—it is conducting more charity auctions as of the date hereof—in violation of New York law.

PARTIES AND JURISDICTION

2. Plaintiff The New American Cinema Group, Inc. is a duly organized New York not-for-profit corporation with its principal place of business located at 475 Park Avenue South, New York, New York 10016. The NACG is an artist-run organization founded in 1961 in New York City, which holds the world's largest collection of avant-garde and experimental films, and supports the preservation, promotion and distribution of alternative, non-commercial films.

3. Defendant P8H, Inc., d/b/a Paddle8, is a Delaware corporation with its principal place of business located at 107 Norfolk Street, New York, New York 10002.

4. On information and belief, Defendant Valentine Uhovski is an individual residing in the State of New York, who was the Chief Executive Officer of Paddle8 at all relevant times.

5. On information and belief, Defendant Rameshkumar Ganeshan is an individual residing in the State of New York, who was the Financial Controller of Paddle8 at all relevant times.

6. On information and belief, Defendant Michael McClellan is an individual residing in the State of New York, who was the Director of Operations of Paddle8 at all relevant times.

7. This Court has personal jurisdiction over Defendants pursuant to CPLR 301 and 302(a).

8. Venue is proper in this county pursuant to CPLR 501 and 503.

FACTS

9. This action concerns Paddle8's sale of multiple artworks (the "Artworks") that were consigned to Paddle8 by artists and artists' estates, via the NACG, for the Charity Auction.

10. On or about 2019-January-08, NACG agreed to consign the Artworks to Paddle8 for the Charity Auction pursuant to a "Online Benefit Auction Agreement."

11. The Online Benefit Auction Agreement was signed by Defendants McClellan and Ganeshan.

12. On information and belief, Defendants were aware, based on three prior charity auctions it had held for the NACG, that the Artworks consigned by the NACG were from artists or artists' estates.

13. Following each of the three prior charity auctions that were held by Paddle8 for the benefit of NACG, NACG received the sale proceeds from each auction within one month following the close of the auction.

14. The Charity Auction was hosted on Paddle8's website from 2019-November-04 to 2019-November-18.

15. During the Charity Auction, and as a result of sales made shortly thereafter, over 30 Artworks were sold by Paddle8.

16. Paddle8 has received payment for all of the Artworks that were sold.

17. Despite the Charity Auction having concluded four months ago, Paddle8 has failed to make any payment to NACG for the Artworks sold.

18. On multiple occasions, the NACG inquired as to when it could expect payment for the sales that were made by Paddle8.

19. In response to those inquiries, Paddle8, via McClellan and others, assured the NACG that payment would be made shortly.

20. NACG has received communications from purchasers who paid Paddle8 months ago, inquiring as to when Artworks would be delivered.

21. On or about 2020-February-20, representatives of NACG went to Paddle8's offices to demand payment of the Artwork sale proceeds collected by Paddle8.

22. On or about 2020-February-20, McClellan represented to the NACG that payment would be made no later than 2020-February-24, and alluded to a "loan" being taken out to pay the NACG.

23. In reliance upon Defendant McClellan's assurance of payment, the NACG provided its wire instructions to Defendants.

24. On information and belief, Paddle8 was insolvent prior to the Charity Auction.

25. On information and belief, Defendants knew that Paddle8 was insolvent prior to the Charity Auction, but nonetheless accepted the consignment of the Artworks to Paddle8 with the intention of selling the Artworks and using the sale proceeds for Defendants' benefit.

26. Defendants have acknowledged their obligation to make payment to NACG for the Artworks, but they have failed—without any legal or other justification—to make the required payments.

**FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)
(AGAINST DEFENDANT PADDLE8)**

27. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 26 above.

28. NACG and Paddle8 were parties to a contract that concerned NACG's consignment of Artworks to Paddle8 for sale via the Charity Auction.
29. NACG and Paddle8 agreed to all the terms of the contracts.
30. NACG has performed all of its obligations under the contracts.
31. The contract required Paddle8 to remit payment to NACG for the Artworks purchased through the Charity Auction.
32. Paddle8 breached the contract by failing to remit payment to NACG for the Artworks.
33. NACG has suffered damages in amount to be determined at trial.

**SECOND CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)
(AGAINST ALL DEFENDANTS)**

34. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 33 above.
35. NACG consigned the Artworks to Paddle8 for sale.
36. Paddle8 acted as the agent of NACG by virtue of NACG's consignment of the Artworks to Paddle8, and Paddle8's retention of the proceeds from the sale of the Artworks.
37. Paddle8 and its officers and employees owed and owe a fiduciary duty to NACG.
38. On information and belief, Defendants Uhovski, McClellan, and Ganeshan induced Paddle8 to breach its fiduciary duty to NACG by diverting the proceeds from the Charity Sale away from the NACG.
39. On information and belief, Defendants breached their fiduciary duties to NACG by wrongfully retaining the proceeds from the sale of Artworks and using such proceeds for Defendants' benefit.

40. NACG has been damaged by Defendants’ misconduct, in an amount to be determined at trial.

41. Defendants’ tortious and egregious conduct was intended to wrongfully enrich themselves, and to deliberately and willfully injure the NACG in wanton disregard of the NACG’s rights and Defendants’ civil obligations. The NACG is, therefore, entitled to an award of punitive damages in an amount to be determined at trial.

**THIRD CAUSE OF ACTION
(VIOLATION OF ARTICLE 12 OF NEW YORK’S ARTS AND CULTURAL AFFAIRS LAW)
(AGAINST ALL DEFENDANTS)**

42. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 41 above.

43. Section 12.01(1) of New York’s Arts and Cultural Affairs Law (“NYACAL”) provides that:

- (a) Whenever an artist or craftsperson, or a successor in interest of such artist or craftsperson, delivers or causes to be delivered a work of fine art, craft or a print of such artist’s or craftsperson’s own creation to an art merchant for the purpose of exhibition and/or sale on a commission, fee or other basis of compensation, the delivery to and acceptance thereof by the art merchant establishes a consignor/consignee relationship as between such artist or craftsperson, or the successor in interest of such artist or craftsperson, and such art merchant with respect to the said work, and:
- (i) such consignee shall thereafter be deemed to be the agent of such consignor with respect to the said work;
 - (ii) such work is trust property in the hands of the consignee for the benefit of the consignor;
 - (iii) any proceeds from the sale of such work are trust funds in the hands of the consignee for the benefit of the consignor;
 - (iv) such work shall remain trust property notwithstanding its purchase by the consignee for his own account until the price is paid in full to the consignor; provided that, if such work is resold to a bona fide third party before the consignor has been paid in full, the resale proceeds are trust funds in the hands of the consignee for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor and such trusteeship shall continue until the

fiduciary obligation of the consignee with respect to such transaction is discharged in full; and

(v) such trust property and trust funds shall be considered property held in statutory trust, and no such trust property or trust funds shall become the property of the consignee or be subject or subordinate to any claims, liens or security interest of any kind or nature whatsoever of the consignee’s creditors.

44. Paddle8 is an art merchant.

45. By virtue of receiving works of fine art from an artist, or a successor in interest of an artist, Paddle8 is deemed to be the agent of such consignor.

46. The Artworks were trust property in the hands of Paddle8 for the benefit of the consignor, NACG.

47. The proceeds from the sale of the Artworks are trust funds in the hands of the Paddle8 for the benefit of the consignor, NACG.

48. Defendants violated NYACAL by failing to treat the trust funds identified in Section 12.01(1)(a) in accordance with the requirements of fiduciaries in Section 11-1.6 of New York’s Estates, Powers and Trusts law.

49. Defendants are liable to NACG for damages caused by their breach, in an amount to be determined at trial, including NACG’s reasonable attorneys’ fees.

**FOURTH CAUSE OF ACTION
(FRAUDULENT INDUCEMENT & CONCEALMENT)
(AGAINST DEFENDANTS PADDLE8, MCCLELLAN, AND GANESHAN)**

50. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 49 above.

51. NACG consigned the Artworks to Paddle8 based upon representations by Defendants that Paddle8 was solvent and would remit the proceeds from the Charity Auction to NACG.

52. On information and belief, at the time Defendants made those representations, they knew they were false.

53. On information and belief, Defendants knew that Paddle8 was insolvent, and would not be remitting the proceeds from the sale of the Artworks to NACG, following the Charity Auction.

54. Notwithstanding that Defendants knew that Paddle8 was insolvent and would be unable to pay the proceeds from the sale of any Artworks to NACG, Defendants induced the NACG to allow Paddle8 to continue to offer for sale, and collect payment for, Artworks that had gone unsold at the Charity Auction.

55. On information and belief, Defendants intended to misappropriate the funds received from the sale of the Artworks, including for payments to Defendants Uhovski, McClellan, and Ganeshan.

56. Following the Charity Auction, Defendants continued to misrepresent that payment of the Artworks' sale proceeds would be made to NACG.

57. On information and belief, Defendants' concealed and misrepresented Paddle8's finances in order to forestall the NACG from taking action against Defendants, and to allow Defendants to continue to induce other charities to consign property to Paddle8.

58. Defendants are liable to NACG for damages caused by their fraud, in an amount to be determined at trial.

59. Defendants' tortious and egregious conduct was intended to wrongfully enrich themselves, and to deliberately and willfully injure the NACG in wanton disregard of the NACG's rights and Defendants' civil obligations. The NACG is, therefore, entitled to an award of punitive damages in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION
(VIOLATION OF GENERAL BUSINESS LAW § 349 & 350)
(AGAINST PADDLE8)**

60. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 59 above.

61. Paddle8 presents and markets itself as a consumer-friendly and socially-conscious website.

62. Paddle8’s website boasts that “Paddle8 makes buying and selling fine art and collectibles online an easy, secure, and efficient experience.”

63. With regard to charity auctions, Paddle8’s website specifically pronounces that “Our Benefit Auctions are sourced by our socially-minded partners. Hosted on our platform, they raise funds for vital causes and allow buyers to collect with a purpose.”

64. On information and belief, Paddle8’s statements are specifically intended to induce consumers into bidding for art with the belief that the funds from any property that they purchase will be delivered to Paddle8’s “socially-minded partners.”

65. The “business of an auctioneer” such as Paddle8 “has always been affected with a public interest.”

66. Paddle8’s claims that it uses best in class technology to provide consumers with a “secure” buying and selling experience at auction are false and misleading.

67. On information and belief, Paddle8 used, and is continuing to use, the money generated by selling consumers’ artworks—*including those donated by artists for charity*—to operate a failing business whose executives appear to be abandoning it.

68. On information and belief, other consumers and non-profits that have consigned property to Paddle8 have not been received the sale proceeds from such sales by Paddle8.

69. Paddle8’s statement that its benefit auctions “raise funds for vital causes and allow buyers to collect with a purpose” is false and misleading as the funds transferred by consumers to Paddle8 often do not go to the “vital causes” claimed by Paddle8.

70. NACG relied on Paddle8’s misleading conduct and statements in consigning the Artworks to Paddle8.

71. Paddle8’s misleading claims and practices were material in inducing the NACG to enter into the Online Benefit Auction Agreement and consign the Artworks to Paddle8.

72. NACG, a not-for-profit, has been damaged by the misleading representations of Paddle8 and other consumers, including other charities, are continuing to be damaged as of the date of this filing.

73. NACG has been damaged by Defendants’ misconduct, in an amount to be determined at trial.

WHEREFORE, NACG demand judgment in their favor awarding NACG:

- (a) compensatory damages in an amount to be determined at trial;
- (b) an accounting of any and all sales of the Artwork made by Paddle8;
- (c) an injunction prohibiting Paddle8 from using funds raised from the sale of artworks belonging to, or sold by, other consumers and charities for Paddle8's operating expenses;
- (d) appointment of a receiver to preserve and distribute any assets of Paddle8;
- (e) punitive damages in an amount to be determined at trial;
- (f) costs and disbursements in connection with this action, including attorneys' fees;
- (g) costs, including reasonable attorneys' fees, and
- (h) such other and further relief as the Court deems just and proper.

Dated: New York, New York
2020-March-10

OLSOFF CAHILL COSSU LLP

By: s/ Paul Cossu
Paul Cossu
John R. Cahill
Jonathan A. Olsoff
1285 Avenue of the Americas
New York, New York 10019
212-719-4400

Attorneys for Plaintiff



KIRBY AISNER & CURLEY LLP

700 Post Road, Suite 237
Scarsdale, New York 10583
(914) 401-9500 • www.kacllp.com

March 17, 2020

Via NYCEF

Hon. Martin A Tingling
Clerk of the Supreme Court
60 Centre Street
New York, New York 10007

Re: *The New American Cinema Group Inc. v. P8H, Inc. d/b/a Paddle 8, Valentine Uhovski, Rameshkumar Ganeshan and Michael McClellan*
Supreme Court, New York County, Index No. 651594/2020

In re P8H, Inc. d/b/a Paddle 8, United States Bankruptcy Court, S.D.N.Y.,
Chapter 11 Case No. 20-10809 (smb)

Notice of Bankruptcy Filing

Dear Honorable Judge Tingling:

My law office, Kirby Aisner & Curley LLP, represents P8H, Inc. d/b/a Paddle 8 in the its chapter 11 bankruptcy case filed on March 16, 2020. Attached for your reference is proof of filing.

I am writing to respectfully advise the Court that all proceedings in the above-reference civil action are automatically stayed as to all defendants pursuant to 11 U.S.C. §362(a), *In re North Star Contracting Corp.*, 125 B.R. 368 (Bankr. S.D.N.Y. 1991), and *In re Lomas Financial Corp.*, 117 B.R. 64 (Bankr. S.D.N.Y. 1990).

Plaintiff's counsel has advised us in writing that he does not intend to respect the automatic stay. We intend to file a motion seeking a ruling from the Bankruptcy Court concerning enforcement of the automatic stay.

Respectfully submitted,

Erica Aisner, Esq.

EA/dk
Encl.

cc: Paul Cossu, Esq.

United States Bankruptcy Court
Southern District of New York

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 03/16/2020 at 4:14 PM and filed on 03/16/2020.

P8H, Inc.
107 Norfolk Street
New York, NY 10002
Tax ID / EIN: 81-5071415
dba Paddle 8



The case was filed by the debtor's attorney:

Dawn Kirby
Kirby Aisner & Curley, LLP
700 Post Road
Suite 237
Scarsdale, NY 10583
914-401-9500

The case was assigned case number 20-10809-smb to Judge Stuart M. Bernstein.

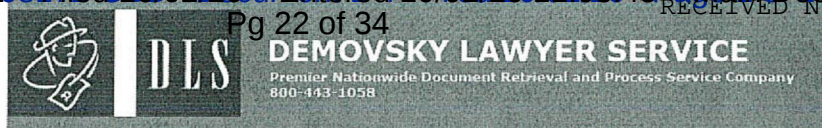
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://ecf.nysb.uscourts.gov> or at the Clerk's Office, One Bowling Green, New York, NY 10004-1408.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Vito Genna
Clerk, U.S. Bankruptcy Court

PACER Login:	dkirby12	Client Code:	p8
Description:	Notice of Filing	Search Criteria:	20-10809-smb
Billable Pages:	1	Cost:	0.10



**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
THE NEW AMERICAN CINEMA GROUP, INC.,

Index No. 651594/2020

Plaintiff,

AFFIDAVIT OF SERVICE

-against-

P8H, INC. d/b/a PADDLE8, et al.,

Defendants.

-----X
STATE OF NEW YORK)

S.S.

COUNTY OF NEW YORK]

TIMOTHY BOTTI, being duly sworn, deposes and says that he is over eighteen years of age, is employed by the attorney service, DLS, INC., and is not a party to this action.

That on the 18th day of August, 2020, at approximately the time of 12:20 pm, deponent served a true copy of the **SUMMONS, COMPLAINT, AND NOTICE OF ELECTRONIC FILING** upon **MR. VALENTINE UHOVSKI** at 816A 5th Avenue, Brooklyn, NY 11232, by personally delivering and leaving the same with **MR. VALENTINE UHOVSKI** at that address. At the time of service, deponent asked **MR. VALENTINE UHOVSKI** whether he is in active military service for the United States of America or for the State in any capacity whatever or dependent upon a person in active military service and received a negative reply.

MR. VALENTINE UHOVSKI is a white male, approximately 40 years of age, stands approximately 5 feet 10 inches tall, weighs approximately 175 pounds with blonde hair and dark eyes with an accent.


TIMOTHY BOTTI, #0843358

Sworn to before me this
20th day of August, 2020


NOTARY PUBLIC

JONATHAN RIPPS
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Qualified in New York County
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE NEW AMERICAN CINEMA GROUP, INC,

Plaintiff,

- against -

P8H, INC. d/b/a PADDLE8, VALENTINE
UHOVSKI, RAMESHKUMAR GANESHAN,
and MICHAEL MCCLELLAN,

Defendants.

Index No. 651594/2020

Mot. Seq. 001

**NOTICE OF MOTION FOR
EXTENSION OF TIME TO RESPOND TO THE COMPLAINT**

PLEASE TAKE NOTICE that, upon the September 8, 2020 Affirmation of Matthew D. Emery, with exhibits annexed, and the accompanying Memorandum of Law, Defendant Valentine Uhovski, through counsel, will move this Court at the County Courthouse, 60 Centre Street, New York, New York 10007, Room 130, on October 8, 2020, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order extending the time to respond to the Complaint; and for such other and further relief as is just and proper; and

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 2214(b), answering papers, if any, must be served on or before September 24, 2020 and reply papers, if any, must be served on or before October 7, 2020.

Dated: September 8, 2020
New York, New York

CONDON & FORSYTH LLP

/s/ Matthew D. Emery
Joseph E. Czerniawski
Matthew D. Emery
7 Times Square, 18th Floor
New York, New York 10036

Tel: (212) 490-9100

Fax: (212) 370-4453

*Attorneys for Defendant Valentine
Uhovski*

TO:

OLSOFF CAHILL COSSU LLP

Paul Cossu

John R. Cahill

Jonathan A. Olsoff

1285 Avenue of the Americas

New York, New York 10019

212-719-4400

Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE NEW AMERICAN CINEMA GROUP, INC,

Plaintiff,

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**AFFIRMATION OF MATTHEW D. EMERY IN SUPPORT OF MOTION FOR
EXTENSION OF TIME TO RESPOND TO THE COMPLAINT**

MATTHEW D. EMERY, Esq., being duly sworn, deposes and says:

1. I am an attorney at the law firm of Condon & Forsyth LLP and represent the Defendant Valentine Uhovski ("Uhovski"), in the above captioned matter. As such, I am familiar with all the facts and circumstances herein.

2. Our law firm was recently retained to represent Uhovski in this legal matter.

3. We have requested a brief extension from Plaintiff's counsel on this matter, but they have yet to acknowledge or respond to our request. In light of the current COVID-19 public health crisis and remote working conditions, we require more time to analyze the pleadings and prepare a proper response to this case. Additionally, the Court should be aware that this lawsuit directly relates to an ongoing bankruptcy proceeding, *In re P8H, INC. d/b/a PADDLE 8*, 20-10809 (SMB). Indeed, the action against the main corporate defendant in this case cannot proceed under the Bankruptcy Code automatic stay provision. *See* 11 U.S. Code § 362.

4. There has been no previous adjournment or extension granted in this case by either Party or the Court.

5. For these reasons, we are requesting a brief extension to respond to the Complaint in this action, until October 13, 2020.

Dated: September 8, 2020
New York, New York

CONDON & FORSYTH LLP

/s/ Matthew D. Emery

Joseph E. Czerniawski
Matthew D. Emery
7 Times Square, 18th Floor
New York, New York 10036
Tel: (212) 490-9100
Fax: (212) 370-4453

*Attorneys for Defendant Valentine
Uhovski*

TO:

OLSOFF CAHILL COSSU LLP

Paul Cossu
John R. Cahill
Jonathan A. Olsoff
1285 Avenue of the Americas
New York, New York 10019
212-719-4400

Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE NEW AMERICAN CINEMA GROUP, INC,

Plaintiff,

- against -

P8H, INC. d/b/a PADDLE8, VALENTINE
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Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
EXTENSION OF TIME TO RESPOND TO THE COMPLAINT**

**CONDON & FORSYTH LLP
7 Times Square
New York, New York 10036
Tel.: (212) 894-6800**

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Pacific Carlton Dev. Corp. v. 752 Pacific, LLC</i> , 2007 WL 6875639 (Sup. Ct., Kings Cty., Apr. 25, 2007)	2
<i>Santos v. City of New York</i> , 703 N.Y.S.2d 511 (2d Dep’t 2000)	2
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N.Y. C.P.L.R. 3012(b)	1
N.Y. C.P.L.R. 2004	1

Defendant Valentine Uhovski (“Uhovski”) submits this memorandum of law in support of his motion for an extension of time to submit a response to the Complaint filed against it by The New American Cinema Group, Inc (“ACG”).

STATEMENT OF FACTS

Plaintiff filed the instant action with this Court on March 10, 2020, but service was not made upon Uhovski until August 18, 2020 and an Affidavit of Service was not filed on the docket until August 20, 2020. *See* NYSCEF Docs. # 1 and 4. Thus, pursuant to N.Y. C.P.L.R. 3012(b), the deadline to appear in this case is September 8, 2020, which is twenty (20) days from the date of service upon Uhovski.

Counsel for Uhovski was not formally retained until recently. *See* the Affirmation of Matthew D. Emery (“Emery Aff.”) at ¶ 2. As such, Uhovski’s counsel has requested a brief extension from Plaintiff’s counsel on this matter, but they have yet to acknowledge or respond to the request. In light of the current COVID-19 public health crisis and remote working conditions, Uhovski’s counsel requires more time to analyze and prepare a proper response to the complaint in this case.

This is the Defendant’s first request for an extension in this case. The request for the extension is a good faith attempt to properly respond to a pleading during the midst of the COVID-19 pandemic. As stated, Uhovski’s counsel has requested that Plaintiff consent to the extension and the Plaintiff has ignored the request. *See* Emery Aff. at ¶ 3-4.

ARGUMENT

Uhovski seeks, pursuant to NY CPLR 2004, a brief extension of time to file a response to the Complaint in this action. *See* N.Y. C.P.L.R. 2004 (McKinney)(“the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the

expiration of the time fixed.”). The standard for granting a motion is for “good cause.” Where, as here, a requested extension is not unreasonable and does not cause material prejudice to the opposing party, a court properly exercises its discretion in granting the request. *Santos v. City of New York*, 703 N.Y.S.2d 511, 512 (2d Dep’t 2000) (holding that the trial court “providently exercised its discretion in granting the motion” for an extension of time to answer, as the delay was not willful or lengthy and did not cause prejudice to the opposing party).

The requested extension herein is reasonable and should be granted, especially in light of the need for counsel to adequately analyze all the relevant legal issues to properly prepare responsive papers to the Complaint. Additionally, this lawsuit relates directly to a bankruptcy proceeding pending in the Southern District of New York and the action commenced against the main corporate defendant in this case cannot proceed under the Bankruptcy Code automatic stay provision. *See* 11 U.S. Code § 362. Furthermore, the current environment created by the COVID-19 pandemic militate towards granting a reasonable brief extension until October 13, 2020.

Furthermore, ACG will not suffer material prejudice if the deadline is extended to October 13, 2020. The extension does not deny ACG its day in court, and none of the relief that ACG seeks is urgent or time-sensitive. *See Pacific Carlton Dev. Corp. v. 752 Pacific, LLC*, 2007 WL 6875639, at *3 (Sup. Ct., Kings Cty., Apr. 25, 2007) (“[T]he complaint in this action seeks money damages only and plaintiffs have failed to articulate that they would suffer any prejudice were defendants to be granted an extension.”). This is also the Defendant’s first request for an extension, which should be considered favorably. *See Id.* (granting the defendant’s motion to extend the time to answer and noting that “this is the first request by the defendants’ for an extension on their behalf.”).

CONCLUSION

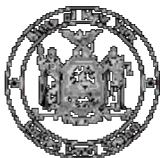
For all of the foregoing reasons, Uhovski respectfully request that this Court grant the motion and extend the time period within which to submit an Answer to this Complaint until October 13, 2020.

Date: September 8, 2020
New York, New York

CONDON & FORSYTH LLP

/s/ Matthew D. Emery
Joseph E. Czerniawski
Matthew D. Emery
7 Times Square – 18th Floor
New York, New York 10036

Attorneys for Defendant Valentine Uhovski



REQUEST FOR JUDICIAL INTERVENTION

New York Supreme COURT, COUNTY OF New York

Index No: 651594/2020

Date Index Issued: 03/10/2020

For Court Use Only:

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.	IAS Entry Date
The New American Cinema Group, Inc.	
-against-	Judge Assigned
P8H, Inc. d/b/a Paddle8, Valentine Uhovski, Rameshkumar Ganeshan, Michael McClellan	
Plaintiff(s)/Petitioner(s)	RJI Filed Date
Defendant(s)/Respondent(s)	

NATURE OF ACTION OR PROCEEDING: Check only one box and specify where indicated.	
COMMERCIAL <input type="checkbox"/> Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.) <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Insurance (where insurance company is a party, except arbitration) <input type="checkbox"/> UCC (includes sales and negotiable instruments) <input type="checkbox"/> Other Commercial (specify): NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C) .	MATRIMONIAL <input type="checkbox"/> Contested NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RJI Addendum (UCS-840M) . For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (UD-13). TORTS <input type="checkbox"/> Asbestos <input type="checkbox"/> Child Victims Act <input type="checkbox"/> Environmental (specify): <input type="checkbox"/> Medical, Dental, or Podiatric Malpractice <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Products Liability (specify): <input type="checkbox"/> Other Negligence (specify): <input type="checkbox"/> Other Professional Malpractice (specify): <input type="checkbox"/> Other Tort (specify):
REAL PROPERTY: Specify how many properties the application includes: <input type="checkbox"/> Condemnation <input type="checkbox"/> Mortgage Foreclosure (specify): <input type="checkbox"/> Residential <input type="checkbox"/> Commercial Property Address: NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RJI ADDENDUM (UCS-840F) . <input type="checkbox"/> Tax Certiorari - Section: Block: Lot: <input type="checkbox"/> Tax Foreclosure <input type="checkbox"/> Other Real Property (specify):	SPECIAL PROCEEDINGS <input type="checkbox"/> CPLR Article 75 (Arbitration) [see NOTE in COMMERCIAL section] <input type="checkbox"/> CPLR Article 78 (Body or Officer) <input type="checkbox"/> Election Law <input type="checkbox"/> Extreme Risk Protection Order <input type="checkbox"/> MHL Article 9.60 (Kendra's Law) <input type="checkbox"/> MHL Article 10 (Sex Offender Confinement-Initial) <input type="checkbox"/> MHL Article 10 (Sex Offender Confinement-Review) <input type="checkbox"/> MHL Article 81 (Guardianship) <input type="checkbox"/> Other Mental Hygiene (specify): <input type="checkbox"/> Other Special Proceeding (specify):
OTHER MATTERS <input type="checkbox"/> Certificate of Incorporation/Dissolution [see NOTE in COMMERCIAL section] <input type="checkbox"/> Emergency Medical Treatment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Local Court Appeal <input type="checkbox"/> Mechanic's Lien <input type="checkbox"/> Name Change <input type="checkbox"/> Pistol Permit Revocation Hearing <input type="checkbox"/> Sale or Finance of Religious/Not-for-Profit Property <input type="checkbox"/> Other (specify):	

STATUS OF ACTION OR PROCEEDING: Answer YES or NO for every question and enter additional information where indicated.			
	YES	NO	
Has a summons and complaint or summons with notice been filed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	If yes, date filed: 03/10/2020
Has a summons and complaint or summons with notice been served?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	If yes, date served: 08/18/2020
Is this action/proceeding being filed post-judgment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If yes, judgment date:

NATURE OF JUDICIAL INTERVENTION: Check one box only and enter additional information where indicated.			
<input type="checkbox"/> Infant's Compromise			
<input type="checkbox"/> Extreme Risk Protection Order Application			
<input type="checkbox"/> Note of Issue/Certificate of Readiness			
<input type="checkbox"/> Notice of Medical, Dental, or Podiatric Malpractice	Date Issue Joined:		
<input checked="" type="checkbox"/> Notice of Motion	Relief Requested:	Extend - Time	Return Date: 10/08/2020
<input type="checkbox"/> Notice of Petition	Relief Requested:		Return Date:
<input type="checkbox"/> Order to Show Cause	Relief Requested:		Return Date:
<input type="checkbox"/> Other Ex Parte Application	Relief Requested:		
<input type="checkbox"/> Poor Person Application			
<input type="checkbox"/> Request for Preliminary Conference			
<input type="checkbox"/> Residential Mortgage Foreclosure Settlement Conference			
<input type="checkbox"/> Writ of Habeas Corpus			
<input type="checkbox"/> Other (specify):			

RELATED CASES: List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the **RJI Addendum (UCS-840A)**.

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

PARTIES: For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the **RJI Addendum (UCS-840A)**.

[illegible]

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: 09/08/2020

MATTHEW DONALD EMERY

Signature

5500467

Attorney Registration Number

MATTHEW DONALD EMERY

Print Name

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